IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2906 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

LALJIBHAI MOHANBHAI BABARIYA

Versus

DIST.MAGISTRATE RAJKOT

Appearance:

1. Special Civil Application No. 2906 of 2002

MR MIG MANSURI for Petitioner No. 1

MR AY KOGJE, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 01/07/2002

ORAL JUDGEMENT

1. By this petition under Article 226 of the Constitution of India, the petitioner- detenu has challenged the legality and validity of the order of

detention dated 17.1.2002 passed against him by the District Magistrate, Rajkot in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act) the petitioner-detenu.

2. The grounds for detention supplied to the detenu petitioner indicate that the petitioner was found involved in four different offences punishable under Sections 66B, 65AE, 116B of the Bombay Prohibition Act. First two offences mentioned in the table at page 18 were registered on 13.4.2001. In the same way, offences shown at Sr. Nos. 3 & 4 were registered on 1.11.2001. It is recorded by the authority that the petitioner is a "chronic bootlegger" and is involved in the activities dangerous to the society and health of the public residing in taluka Dhoraji, and the area surrounding one village known as Moti Parabadi. Gap of the period between first two offences and second two offences is relevant and it is also relevant to note that on account of so-called information given by the accused persons Hari Narayanbhai and Kishor Gandabhai, the petitioner detenu was raided and the offences were registered against him.

3. The petitioner has challenged the legality and validity of the order of detention on number of grounds mentioned in the memo of the petitioner. However, the ld. counsel Mr. MIG Mansuri for the petitioner, has mainly focussed his arguments on one ground and has submitted that alleged activities of the petitioner mentioned in the grounds of detention cannot be said to be activities affecting the public order. So, the District Magistrate, Rajkot has no scope to exercise jurisdiction or powers vested in him under Section 3(2) of the PASA Act.

4. The subjective satisfaction recorded by the authority says that the activities of the petitioner affect the "public order" is neither legal nor logical. At the most, it can be said that the activities fall under the category which can be said to be adverse to the law & order situation in the society. It is submitted that in one of the offences, name of the petitioner was not disclosed at all and he has been falsely implicated. Mr. Mansuri has taken this Court through the grounds of detention and relevant record available and has submitted that in the case of similar set of facts, this Court (Coram: A.L. Dave, J) while dealing with the Spl.C.A. No. 143 of 2002 in the case of Babuji Jakshi Thakore v/s

State of Gujarat, decided on 14.2.2002, has held that the activities of the person concerned concerning with the offences punishable under the provisions of the Bombay Prohibition Act, cannot be said to be the activities affecting the "public order" in absence of any other relevant and cogent set of facts and such set of facts credible material. In the case of Babuji Jakshi Thakore (supra), this Court has observed that the only material wherein also there is nothing to indicate any disturbance to the "public order". So, mere registration of criminal offences punishable under the Bombay Prohibition Act should not give rise to any cause for detaining authority to pass such order affecting adversely to the personal liberty.

5. Ld.AGP Mr. Kogje has submitted that the decision of the Apex Court in the case of Kanuji v/s State of Gujarat & Ors, reported in 1992(2) GLH 415, can be applied to the facts of this case and he has placed reliance on the relevant part of para-6 of the decision wherein the Apex Court has said :-

> " As already stated earlier, in this case the Detaining Authority has specifically mentioned in the grounds that the activity of the detenu was likely to cause harm to the public health and that by itself is sufficient to amount to affecting adversely the public order as defined by the Act. The Detaining Authority has also stated that as a result of resorting to violence by the petitioner for carrying on his bootlegging activity, even tempo of public order has also disturbed on some occasions. In view of the material on record, it cannot be said that the satisfaction of the District Magistrate, in this behalf, was not reasonable or genuine."

6. Against that, ld. counsel Mr. Mansuri for the petitioner has rightly submitted that this Court has considered the ratio of the very decision of the Apex Court viz. Kanuji Zala (supra) while dealing with LPA No. 223/2000 in Spl.C.A. No. 554/2000 decided on 22.8.2000 in the case of Ashok Balabhai Makwana. In para-5 of the said decision, it has been observed that the Apex Court in the decision of Kanuji Zala (supra) has said that what is required to be considered in such cases is whether there as credible material before the detaining authority on the basis of which a reasonable inference could have been drawn as regards the adverse effect on the maintenance of the "public order" as defined in the PASA Act. The contention is that the

touch-stone in such cases is the presence of credible material before the detaining authority. The Apex Court was dealing with the case of detenu involved in the offences punishable under the Bombay Prohibition Act. In that case, there was credible material over and above registered criminal offences punishable under the Bombay Prohibition Act. Whereas in the case on hand, such credible material was not there before the detaining authority while passing the order of detention. Similar facts and circumstances were also there in the case of Ashok Balabhai Makwana (supra) and, therefore only, the Division Bench allowed the appeal by reversing the finding recorded by the ld. Single Judge and quashed the order of detention passed by the detaining authority. In my view, ratio of the decision of the Division Bench in the case of Ashok Balabhai Makwana (supra) is applicable to the facts of the present case. Decision of the ld. Single Judge in Spl.C.A. No. 143/2000 in the case of Babuji Jakshi Thakore (supra) also helps the case of the present petitioner. So, without going into the merits of the other grounds narrated in the memo of the petition, the order of detention can be quashed on the sole ground that the detaining authority was not right in recording subjective satisfaction to the effect that the activities of the detenu are against the maintenance of "public order" in absence of credible material.

7. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 17.1.2002 passed by the District Magistrate, Rajkot is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.
Direct Service is permitted.

1-07-2002 [C. K.BUCH, J]
*rawal